(ii) This section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed."

Sections 135 and 136, Land Code, 1926.

"135. The chargee upon default in payment of the principal sum or any part thereof, or of any interest or periodical payment secured by any charge, may

(*a*) receive the rents of the charged land,

(*b*) distrain upon the occupier or tenant of the said land for the rent then due.

136. Whenever a chargee shall give notice of his demanding to receive the rents of the charged land to the tenant or occupier, or other person liable to pay on account of the rents thereof, all the powers and remedies of the chargor in regard to receipt and recovery of and giving discharges for such rents shall be suspended and transferred to the said chargee until such notice be withdrawn or the charge be satisfied and a discharge thereof duly registered, and in every such case the receipt in writing of the chargee shall be sufficient discharge for any rents therein expressed to be received, and no person paying the same shall be bound to enquire concerning any default or other circumstance affecting the right of the person giving such notice beyond the fact of his being duly registered as chargee of the land; provided that nothing herein contained shall interfere with the effect of any Order of Court in regard to the payment of rent under the special circumstances of any case, or shall prejudice any remedy of the chargor against the chargee for wrongful receipt of rents or for an account."

Rent in the land Code 1926 means whatever is to be paid annually on account of the use or occupation of land whether in money or in kind. In any event section 523 and form 175 in the third schedule to the Civil Procedure Code shew that when the sum payable monthly by a tenant occupying a house or premises to the landlord for such occupation becomes overdue, than such sum is in arrear and can be distrained for.

From the two sections 135 and 136 of the Land Code it is obvious that upon default a chargee on giving notice to the tenant of charged land to receive the rent becomes entitled to recover the rent thereafter becoming due and to recover the rent then in arrears and to distrain for such arrears if necessary. The service of the notice to receive rent suspends all the powers and remedies of the chargor in regard to receipt and recovery of and giving discharges for such rents already due or to become due and transfers such powers to the chargee who alone can give discharges thereafter. Though the right to recover arrears in this case may have passed to the Official Assignee on the chargor's bankruptcy, yet by virtue of section 9, sub-section (ii) the chargee's right to realize or otherwise deal with his security remains expressly unimpaired, and the chargee's notice will suspend the power of the Official Assignee to receive or recover rents and to give discharges for the same.

The Court is therefore of opinion that the notice of 20th March, 1933, appropriated to the chargee the rents of the charged land already due and unpaid and the rents to become due, and that all sums paid for rents by tenants after service of that notice should go to the chargee, and all sums paid before service of that notice to the Official Assignee.

The direction requested will be "yes" in terms of clause (b) of the application.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

August 15, 1933.

MUTUAL TRUST BENEFIT ASSOCIATION LIMITED

A. T. DURRAY.....Appellants.

vs.

PUBLIC PROSECUTOR.....Respondent.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 21 of 1933]

Insurance—Life Assurance—Life Assurance Companies Enactment, 1924, sections 2, 3, 4, 29.

The first appellant was a limited company carrying on "Marriage and Death Benefit Schemes" and the second appellant was the managing director. Both the appellants were convicted by the Magistrate Kuala Lumpur, of carrying on life assurance business and failing to comply with the requirements of section 4 of the Life Assurance Companies Enactment, 1924.

The certificate of the company under the Death Benefit Scheme was as follows:—

"Mutual Trust Benefit Association Ltd: Kuala Lumpur

Incorporated in F.M.S.

DEATH BENEFIT SCHEME CERTIFICATE OF MEMBERSHIP

Registered No. 615—3/D

This is to certify that P. Kuppammal D/O K. Pakirisamy of Kuala Lumpur is a member in the Third Class Death Benefit Scheme of the Mutual Trust Benefit Association Ltd: from the month of April one thousand nine hundred and thirty three and in the event of her death after three years from date hereof her nominee or nominees will be paid a Death Benefit under the rules, terms and conditions of this scheme.

This certificate shall be produced when claims are paid with receipts for the last payments of three months' subscriptions.

Dated at Kuala Lumpur, this twenty-eighth day of April one thousand nine hundred thirty three.

Sgd. A. T. Durray
Managing Director.

stamped with 4 cents stamp.

Sgd. ?
Secretary.

Note:—This certificate is not transferable."

Rule 12 of the rules of the company provided as follows:—

"12. Continuation of Subscription:—A member shall have to continue to pay his or her subscriptions for 20 years from the date of his or her membership or until his or her marriage or death if previous. After 20 years the subscription shall cease, but the membership shall continue and the member shall be eligible for claims at any time on death or marriage."

Held, that the certificate of the company under the Death Benefit Scheme was a policy within the definition of "policy of assurance upon human life" in section 2 of the Life Assurance Companies Enactment, 1924, and that the appellants were rightly convicted of carrying on a life assurance business.

E. D. Shearn and *P. C. Au-Yong* for the appellants.

R. C. Cussen, Deputy Legal Adviser for respondent.

Cur. Ad. Vult.

TERRELL, AG. C.J.—The only question that arises on the appeal is whether the defendants are carrying on 'life assurance business' within the meaning of section 3 (1) of the Life Assurance Companies Enactment, 1924. If they are doing so they are bound to make a deposit under section 4 (1), and failure to make such deposit renders them liable to penalties under section 29 (1).

In section 2 'life assurance business' and 'policy of assurance of human life' are defined as follows:—

> "Life assurance business" means the issue of or the undertaking of liability under policies of assurance upon human life, or the granting of annuities upon human life.
>
> "Policy of assurance upon human life" means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life.

The appellants' argument was twofold:—

(1) that the certificate Exhibit R2 was not a policy of insurance but only evidence of a contract and

(2) that the contract was not "subject to payment of premiums for a term dependent on human life" because after twenty years the payment would cease.

As to the first point Mr. Shearn argued that exhibit Q was an offer and that the acceptance was the entry in the register, and the certificate of membership Exhibit R2 was really superfluous and at the most evidence of a pre-existing contract. I do not think this argument is sound. It appears to me that Exhibit R2 is definitely the acceptance and is "the instrument by which the payment of of money is assured on death." It says so in so many words. Exhibit R2 certifies that the assured's nominee "will be paid a death benefit under the rules terms and conditions of this scheme." It is a contract containing an undertaking by the Company. On looking at the rules we find that by Rule 32 the Company guarantees the payment of "100% profits over and above the subscription paid by the member."

Mr. Shearn argued that as regards death benefit Rule 32 was meaningless and unenforceable. Such an argument is not open to the defendants. The guarantee is introduced to attract members and the defendants will not be permitted to argue that the supposed benefits provided by the guarantee are nugatory just as a company cannot in such a case set up that any illegality attaches to the policies which it has issued (see judgment of Phillimore, L. J. in *Hampton* v. *Toxteth Co-operative Provident Society Limited*, 1915, 1 Chancery at page 738).

I think therefore that Exhibit R2 is a policy within the first part of the definition.

In any case I consider that it is "an instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life." The premiums cease to be payable on death and therefore the payment is dependent on human life and none the less so because in this as in the policies of many insurance companies, premiums cease to be payable after a fixed period if death has not ensued.

The case of *Hampton* v. *Toxteth Co-operative Provident Society Limited*, 1915, 1 Chancery, page 721 does not assist the appellants. At page 732 the grounds upon which Cozens-Hardy, M. R. decides that the company was not carrying on life assurance business are specified. He says:—

> "No policy has been issued, no premium has been paid, there is no obligation upon the society to appropriate any further sum to the insurance fund."

The elements which are lacking in the case cited are all present in the case now under appeal.

As regards sentence I agree with the sentence inflicted by the learned Magistrate.

The appeal will be dismissed.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J., MCFALL, J.

August, 8, 1933.

KURUP .. .. .. **Appellant.**

vs.

PUBLIC PROSECUTOR .. **Respondent.**

[PERAK CRIMINAL APPEAL No. 10 OF 1933]

Criminal Procedure Code, 1926, Section 112, 113 as amended by the Criminal Procedure Code (Amendment) Enactment, 1932—Statement by an accused person to the police—Evidence Ordinance, sections 3, 80, 155(c)—Proof of such statement—Meaning of "evidence" in section 3.

A statement by an accused person to the police can only be used to impeach his credit under section 113 (ii) of the Criminal Procedure Code, 1926, after it has been proved, and since such a statement does not fall within the definition of "evidence" in section 3 of the Evidence Ordinance, it cannot be admitted under section 80 without being proved.

If such a statement has been admitted under the provisions of section 113 (ii) of the Criminal Procedure Code, it may be put in evidence, notwithstanding that it amounts to a confession, and that it would otherwise be inadmissible under section 26 of the Evidence Ordinance.

Appellant in person.

L. C. Simpson-Gray, Deputy Public Prosecutor for the respondent.

TERRELL, ACTING C. J.—The accused had been convicted by Gerahty J. under section 326 of the Penal Code and sentenced to two years rigorous imprisonment, and in addition was ordered to pay $250/- compensation to the complainant. An appeal was preferred to the Court of Appeal, and the appeal was heard at Ipoh on the 8th August 1933.

A question arose as to whether a statement made by the accused to a Police Officer should have